

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SCOTT RODGERS )  
Plaintiff )  
 ) CIVIL ACTION NO.: 04-11842-PBS  
V. )  
 )  
CORRECTION OFFICER ORCHID, )  
UNKNOWN CORRECTION OFFICER )  
JOHN DOE, JOE WHITMORE, DR. )  
HOWARD, JOHN SMITH, PLYMOUTH )  
COUNTY )  
Defendants )

**MOTION OF THE DEFENDANT, JOHN B. HOWARD, M.D., FOR LEAVE TO FILE  
SUMMARY JUDGMENT MOTION AND TO ADVANCE HEARING ON MOTION FOR  
SUMMARY JUDGMENT**

Now comes the defendant, John B. Howard, M.D. ("Dr. Howard"), and moves for leave to file a motion for summary judgment, and to advance the hearing date on his Motion for Summary Judgment, so that this Motion may be argued on September 22, 2006, the date scheduled for hearing on the Motion for Summary Judgment filed on behalf of defendants Judith Orcutt and Joseph Whittemore. Defendant Howard's Motion for Summary Judgment has been contemporaneously filed with this motion for leave, and the defendant requests that the Motion be accepted for filing instanter.

In support of this motion, the defendant states that on August 4, 2006, defendants Orcutt and Whittemore were granted an extension of time to file a motion for summary judgment, and those defendants filed a Motion for Summary Judgment on August 18, 2006. Hearing on that motion has been scheduled for September 22, 2006. Defendant Howard was deposed on September 8, 2006, and now seeks leave to file a motion for summary judgment on grounds similar to those raised by defendants Orcutt and Whittemore.

No party will be prejudiced by allowance of the motion for leave and the motion to advance the hearing date, as Dr. Howard's motion raises issues similar to those raised in the motion of defendants Orcutt and Whittemore, and therefore the plaintiff will be capable of responding to both motions prior to the September 22, 2006 hearing date. In addition, if necessary, the parties can argue the merits of the motion on September 22, 2006, and submit additional memoranda in support or opposition after the hearing. Granting Dr. Howard's motion for leave and to advance the hearing date will aid judicial efficiency, as it is reasonable to allow those arguments to be raised at the same time as similar arguments raised on behalf of other defendants.

WHEREFORE, for the foregoing reasons, the defendant, John B. Howard, M.D., respectfully requests that this Court grant leave to file a summary judgment motion and accept the contemporaneously filed motion for filing instanter, and that the hearing on Dr. Howard's motion be scheduled for September 22, 2006.

Respectfully submitted,

/s/Edward F. Mahoney

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**CERTIFICATE OF SERVICE**

I, Edward F. Mahoney, counsel for defendant, John B. Howard, MD hereby certify that on the 11th day of September, 2006, I served the foregoing by electronically forwarding a copy thereof, to:

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/s/Edward F. Mahoney

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